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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,080	11/14/2003	Timothy Mancour	16234BAUS02U	9529
34645	7590	07/12/2007	EXAMINER	
JOHN C. GORECKI, ESQ.			LEVITAN, DMITRY	
P.O BOX 553			ART UNIT	
CARLISLE, MA 01741			PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/714,080

Applicant(s)

MANCOUR ET AL.

Examiner

Dmitry Levitan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/14/03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: communication network 10 on page 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to, because abbreviations or acronyms TAP, PID, CIR[phb] and TC[phb] are cited throughout the specification without explanation. Applicant should provide a full explanation for the acronyms at least at their first occurrence in the specification.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claims 5, 6 and 11-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 limitations directed to marking traffic with “designation” is unclear, because it is not understood what is designation in the context of the claim, as the common use of term designation is address, but the claim limitations contradict the common use of this term, implying that designation is a tag.

Claim 11 limitations directed to “meter in-profile packets on a PHB basis and out-of-profile packets on a common basis” are unclear, because it is not understood what is “a common basis”, as according to the disclosure (abstract) the packets that are not in profile are still PHB packets and are metered according to PHB basis.

Claim 16 limitations directed to “meter in-profile packets on a PHB basis and out-of-profile packets on a per port basis” are unclear, because it is not understood what is “a per port basis”, as according to the disclosure (abstract) the packets that are not in profile are still PHB packets and are metered according to PHB basis.

Claim Rejections - 35 USC § 103

5. Claims 1-7 and 9-18 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Gandhi (US Pub. 2005/0078602) in view of Blake (Blake. An Architecture for Differentiated Services, RFC 2475, December, 1998).

6. Regarding claims 1-3, 7, 11, 13, 15 and 16, Gandhi substantially teaches the limitations of claims:

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a method of allocating bandwidth at a network element (allocating bandwidth to a customer on a network [0002]-[0008]), the method comprising the steps of:

metering first traffic for a first traffic flow to ascertain first in-profile traffic for the first flow (classifying the packets of traffic of service V1 as conforming or not conforming according to the predetermined bandwidth profile, [0013]-[0014], as shown on Fig. 3 and disclosed on [0046]-[0052]);

metering second traffic for a second traffic flow to ascertain second in-profile traffic for the second flow (classifying the packets of traffic of service V2 as conforming or not conforming according to the predetermined bandwidth profile, [0013]-[0014], as shown on Fig. 3 and disclosed on [0046]-[0052]); and

commonly metering first traffic that has not been ascertained to be first in-profile traffic with second traffic that has not been ascertained to be second in-profile traffic to ascertain commonly metered traffic (allocating excess bandwidth from first and second services, V1 and V2, as shown on Fig. 3 and [0046]-[0052], in any convenient way, wherein the excess traffic is metered by common bucket 355 as a third type of service V3).

In addition, Gandhi teaches traffic metering according to IETF RFC 2697 and 2698, which are incorporated by reference [0005].

Gandhi does not teach traffic flow as a Per Hop Basis group (PHB).

Blake teaches per-hop behavior (PHB) as a guarantee a minimal bandwidth allocation of a link to a behavior aggregate (RFC 2475, 2.4, Per-Hop behaviors).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add using PHB of Blake to the system of Gandhi to improve the system compatibility with a popular Internet Architecture of RFC 2475.

In addition, regarding claim 2, Gandhi teaches a network element 210, shown on Fig. 2, inherently comprising a port, because port is essential for the network element 210 to connect with network 205.

In addition, regarding claim 7, Gandhi teaches use of token buckets to meter first and second traffic, including the third bucket for metering the excess common traffic capacity, as shown on Fig. 3 and [0046]-[0052].

7. Regarding claim 4, Gandhi teaches classifying the incoming traffic in first and second types of services, each characterized by appropriate bandwidth profile, [0013] and [0014].

8. Regarding claim 5, 6, 9, 10, 12, 17 and 18 (as best understood), Gandhi teaches marking the traffic in-profile as green and the traffic out-of-profile as yellow [0014] and [0016], wherein the marking method is applied to both traffics V1 and V2, shown on Fig. 2 and marking non-compliant traffic as red [0055].

Gandhi does not teach marking the common traffic flow as yellow and red.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add using marking the common traffic as yellow and the common non-compliant traffic as red to the system of Gandhi to implement the coloring scheme to the common traffic to prioritize handling of the packets in the common traffic.

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9. Regarding claim 14, Gandhi teaches allocation rules, comprising a committed information rate and a committed burst rate (bandwidth allocation comprising committed information rates and peak information rates [0023]).

10. Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gandhi in view of Balachandran (US Pub. 2004/0208183).

Gandhi substantially teaches the limitations of claim 8 (see claims 1 and 7 rejection above).

Gandhi does not teach providing no tokens for a bucket to set the profile to zero. Balachandran teaches providing no tokens to user, freezing the tokens to user, experiencing network problems [0099].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add providing no tokens for a token bucket of Balachandran to the system of Gandhi to improve the system operation with a failed network connection to stop the useless transmission.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Levitan whose telephone number is (571) 272-3093. The examiner can normally be reached on 8:30 to 4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on (571) 272-2092. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Dmitry Levitan
Primary Examiner
Art Unit 2616

**DMITRY LEVITAN
PRIMARY EXAMINER**